

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDRE L. RIGBY,

Defendant.

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ORDER ON SENTENCE REDUCTION
UNDER 18 U.S.C. § 3582(c)(2)

This matter is before the court for a sentence reduction under Amendment 706 to the United States Sentencing Guidelines, U.S.S.G. § 2D1.1 (2008), Filing No. [42](#), and on counsel's motion to withdraw, Filing No. [45](#). On review of the record, the court finds the defendant's motion to reduce his sentence should be denied.

On November 1, 2007, amendments to U.S.S.G. § 2D1.1 lowered sentences for crack cocaine offenses by two levels. See U.S.S.G. app. C, amend. 706 (2007). The amendment can be retroactively applied. See U.S.S.G. app. C, supp., amend. 713 (2007); [18 U.S.C. § 3582\(c\)\(2\)](#). Further, the Sentencing Guidelines are now advisory. [United States v. Booker, 543 U.S. 220 \(2005\)](#). However, the crack/powder amendments to the Guidelines have no effect on a statutory minimum sentence. See [United States v. Byers, 561 F.3d 825, 832 \(8th Cir. 2009\)](#).

Pursuant to a Fed. R. Crim. P. 11(c)(1)(C) plea agreement, Andre L. Rigby entered a plea of guilty and was sentenced to 120 months' imprisonment on a charge of conspiracy to distribute and possession with intent to distribute crack cocaine (Count I). Filing No. [27](#), plea Agreement; Filing No. [35](#), Judgment. The defendant was sentenced to the statutory minimum sentence. See Filing No. [36](#), Statement of Reasons (sealed); 21 U.S.C.

§ 841(b). Accordingly, the court finds the defendant's motion to reduce his sentence should be denied. Resolution of this motion renders appointed counsel's services unnecessary and counsel's motion to withdraw will be granted.

IT IS ORDERED:

1. The defendant's motion for modification of his sentence (Filing No. [42](#)) is denied.
2. All provisions of the judgment dated February 4, 2005 (Filing No. [35](#)) shall remain in effect.
3. Defense counsel's motion to withdraw as counsel (Filing No. [45](#)) is granted.

DATED this 12th day of January, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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